



# TOWN OF TEWKSBURY ZONING BOARD OF APPEALS

999 Whipple Road  
Tewksbury, MA 01876

Robert Dugan, Chairman  
Marc DiFruscia, Clerk  
Leonard Dunn  
**Associate Members:**  
Gerald Kutcher  
Jaime Doherty

## DEPARTMENT OF COMMUNITY DEVELOPMENT

### MEETING MINUTES May 29, 2014

The meeting was called to order at 6:32 p.m. by Leonard Dunn, Vice Chairman, at the Pike House. Present at the meeting were Gerald Kutcher and Jaime Doherty. Also in attendance was Melissa Johnson, Recording Secretary.

Rob Dugan and Marc DiFruscia were not present.

#### **Approval of Minutes – April 24, 2014**

**MOTION:** Mr. Dunn made the motion to approve the April 24, 2014 meeting minutes as presented; seconded by Mr. Kutcher and the motion carried 3-0.

#### **Katie's Way Bond Release**

Mr. Dunn noted that the Board is in receipt of correspondence from Steven Sadwick, Director of Community Development, stating that all of the outstanding issues have been resolved and requesting the Board release the Bond. Mr. Dunn read the correspondence out loud.

**MOTION:** Mr. Kutcher made the motion to release the bond in place for Katie's Way; seconded by Ms. Doherty and the motion carried 3-0.

#### **NEW HEARING**

**Domenic Germano** for a variance from Section 4220 and Appendix B of the Zoning Bylaw to construct a proposed 20' x 50' touch less car wash bay addition to the existing car wash. Said property is located at **1700 Shawsheen Street**, Assessor's Map 113, Lot 6, Heavy Industrial District.

Present was Joe Germano, Attorney Richard O'Neill, and Attorney Allyson O'Connor. Attorney O'Neill noted that included within the application that has been filed with the Board is the site plan use special permit that was granted by the Planning Board for the premises in 2004/2005. The property is located at the corner of Shawsheen and East Streets. The current uses are a service station, convenience store, office space, and car wash. The facility has been in constant use since it was permitted. Attorney O'Neill explained that in May 2008, Mr. Germano came

before the Board seeking a variance from the side setback in order to construct an addition to the existing car wash. The abutter on this side of the property is Northeast Refrigeration and consists of other industrial uses. At that time, the Board unanimously granted the variance. The variance was not acted upon within the one year period, but was extended for an additional four years by the State Permitting Act. The applicant is now seeking to re secure the variance for the addition to the car wash.

Attorney O'Neill noted that the 2014 application is identical to the 2008 application with the exception of two slight changes: 1) the structure was originally proposed at 60' x 16.5' and this has been reduced to 20' x 50' for traffic reasons, and 2) a six foot storage/equipment room is now being proposed along the side. Attorney O'Neill explained that Planning Board approval is also required because they are proposing changes to the site plan with the addition.

Attorney O'Neill reviewed the original 2008 decision aloud.

Mr. Dunn inquired about the monetary donations included within the original variance request. Attorney O'Neill explained that these were Special Permit items for easements. The land has been donated to the town and State for the purpose of roadway improvements. The second donation was \$20,000 to the Town Tewksbury for the purpose of the East Street infrastructure improvement fund administered by the Planning Board. Attorney O'Neill read the donation portion aloud and noted that the money has been paid as a building permit could not have been issued without it.

Mr. Dunn opened the hearing to the public and no one came forward to comment.

**MOTION:** Mr. Kutcher made the motion to close the public hearing portion; seconded by Ms. Doherty and the motion carried 3-0.

**MOTION:** Mr. Kutcher made the motion to approve Domenic Germano for a variance from Section 4220 and Appendix B of the Zoning Bylaw to construct a proposed 20' x 50' touch less car wash bay addition to the existing car wash. Said property is located at 1700 Shawsheen Street, Assessor's Map 113, Lot 6, Heavy Industrial District; seconded by Ms. Doherty and the motion carried 3-0.  
**DUNN, KUTCHER, DOHERTY**

**Estate of Virginia Doulames** for a variance from Section 4145 of the Tewksbury Zoning Bylaws for a perimeter distance requirement as shown on plans filed with this Board. Said property is located at **677 Trull Road**, Assessor's Map 26, Lot 73, zoned Residential.

Present on behalf of the applicant was Attorney Richard O'Neill and Attorney Allyson O'Connor.

Attorney O'Neill explained that this project has been worked on for quite some time by himself, Attorney Charles Zaroulis, and Edward Johnson, Building Commissioner, with respect to the lot and its' abutting neighbor. Attorney O'Neill noted that a fairly detailed brief of the history of events has been included within the application as well as a copy of an opinion letter from Attorney Zaroulis to Mr. Johnson. Attorney O'Neill read the correspondence aloud and explained that in summary, there are two lots in question: one parcel on which the homestead exists that is less than one acre and is complying nonconforming in that it existed prior to 1956 and has not been held in common ownership since that

time. As a result, it is considered a grandfathered lot. The second lot was purchased by Mr. Doulames from the abutting owner and is an acre in size; however, the purchase came in two separate portions: one portion connecting out to Mt. Joy Drive for the purpose of constructing an addition onto the building (described as the “throated” lot). At a later time, Mr. Doulames also purchased the remainder of what is known as Lot 4. The question then became what, if any, of the lots merged and if they merged were they buildable and if subdivided would they be non buildable.

Attorney O’Neill explained that they conclude that the original lot (Lot 73 referred to as Trull Road lot or Lot 4A by Attorney Zaroulis) that contained the home is in fact a grandfathered lot, the “throated” area and the original lot merged; this is a buildable lot containing an existing structure. The one acre lot did not merge and is considered a separate lot (Lot 76).

Attorney O’Neill explained that two issues then arose: 1) is there an issue with the “Z” factor, and 2) is the perimeter affected. Attorney O’Neill discussed what are known as “hammerhead lots” and explained that as a result of the “hammerhead lots”, a perimeter bylaw was put in place; however, in the bylaw, the “Z” factor does not apply to grandfathered lots that are less than one acre.

The applicant is requesting relief from Section 4145 as there is less than 40 feet between the sidelines for both the original and merged portions.

Attorney O’Neill requested the Board reference the plan that he has provided to the Board tonight dated March 24, 2014 if a variance is granted and noted that new Lot 73 is the merged lot.

Mr. Dunn opened the hearing to the public.

Mark Trumont came forward and noted that he is a friend of Steve Bourgeois who is purchasing the home 677 Trull Road. Mr. Trumont asked what lot the house is considered and Attorney O’Neill explained it is Lot 73. Mr. Trumont asked how many houses could be built on the lot behind the home. Attorney O’Neill explained that it is a one acre site and could house one single family home.

Martha Spaulding came forward and explained that her mother passed away a month ago and that she is one of the three co owners of Lot 72. Ms. Spaulding asked what the width of the driveway is at the east point, noted that one of the other neighbors had tried to put in a driveway in the rear, and that there was no plan done to define the small lot. Ms. Spaulding also noted that a garage was constructed and he was unable to use it due to the land and plan that came about. Ms. Spaulding questions the logic of the town to allow the street to cause such strange lot angles and feels it would be beneficial to all parties to take a portion of the land and this would also allow for the Halls to do their driveway. Ms. Spaulding noted that she is also concerned with snow removal and storage, if commercial vehicles will be parked there, and that the home is being turned into a multi family use as the previous family had put in a second living space and it should be a single family.

Attorney O’Neill explained that the driveway has been in existence since the 1960’s and has been maintained and plowed and it has never been an issue. Carving up extension areas is not possible and cannot be done. The pitch point of the access driveway that extends out to Mt. Joy Drive is 21.37 feet. Attorney O’Neill explained that the home is a single family and always has been. An addition was put on to the home that had an indoor swimming pool and indoor gymnasium. The gym was taken out and the pool was filled and the area made into a living space. When the father passed away, the mother remained in the home with one of the daughters (Melanie) to help take care of her. A stove, microwave, etc. was installed for the caretaker. The mother has passed and the daughter has moved out. Attorney O’Neill noted that a real estate broker listed the home as a multi family and it is not. Attorney O’Neill Met with Mr. Johnson at the site and stated that they would remove all of the utilities in the addition

portion including the stove, microwave, etc. A contractor has been hired to complete this work. The area is intended to be a family room. The new buyers have been made aware that this is a single family home and that it can only be used as such.

Ms. Doherty asked how the addition is accessed from the main house and Attorney O'Neill explained that there is an interior entrance.

Ms. Spaulding asked if the addition was inspected when the pool was filled in and if a building permit was applied for. Attorney O'Neill confirmed this and explained that one of the issues was the building department lost records in the 1990's while moving offices.

**MOTION:** Mr. Dunn made the motion to close the public hearing portion; seconded by Mr. Kutcher and the motion carried 3-0.

**MOTION:** Ms. Doherty made the motion to approve Estate of Virginia Doulames for a variance from Section 4145 of the Tewksbury Zoning Bylaws for a perimeter distance requirement as shown on plans filed with this Board. Said property is located at 677 Trull Road, Assessor's Map 26, Lot 73, zoned Residential; the property shall only be used a single family residence, reference shall be made to the plan dated March 24, 2014; seconded by Mr. Dunn and the motion carried 3-0.

## **CONTINUED HEARING**

**GRE Tewksbury Property, LLC and GRE Tewksbury Apartments, LLC d/b/a Shawsheen Place** for (a) a determination and confirmation pursuant to 760 CMR 56.05 (11) that the affordability "lock in period" set forth in the Comprehensive Permit issued by the Board on May 26, 1988 regarding the subject property has expired; and (b) modification of the Comprehensive Permit to address the affordability restriction. Said property is located at **11 Old Boston Road**, Assessor's Map 48, Lot 33, zoned multifamily, commercial and Village Mixed Use Overlay Districts.

The applicant has requested this matter be continued to May 9, 2014 as they continue to have discussions with town officials.

**MOTION:** Mr. Kutcher made the motion to continue GRE Tewksbury Property, LLC and GRE Tewksbury Apartments, LLC dba Shawsheen Place for (a) a determination and confirmation pursuant to 760 CMR 56.05 (11) that the affordability "lock in period" set forth in the Comprehensive Permit issued by the Board on May 26, 1988 regarding the subject property has expired; and (b) modification of the Comprehensive Permit to address the affordability restriction. Said property is located at 11 Old Boston Road, Assessor's Map 48, Lot 33, zoned multifamily, Commercial and Village Mixed Use Overlay Districts to May 29, 2014 at 6:30 p.m.; seconded by Ms. Doherty and the motion carried 3-0.  
**DUGAN, KUTCHER, DOHERTY**

## **Old Business**

There was no old business.

**New Business**

There was no new business.

**Adjournment**

**MOTION:**    **Mr. Kutcher made the motion to adjourn; seconded by Ms. Doherty and the motion carried 3-0.**

*Approved: 6/26/14*

*List of documents for 5/29/14 Agenda  
Documents can be located at the Community Development Office*

Approval of Minutes – April 24, 2014  
Katie Way Bond Release

- *Letter 5/20/14 from Livingston Street Developers Trust.*

**NEW HEARING**

**6:30 P.M.**      **Domenic Germano** for a variance from Section 4220 and Appendix B of the Zoning Bylaw to construct a proposed 20' x 50' touchless car wash bay addition to the existing car wash. Said property is located at **1700 Shawsheen Street**, Assessor's Map 113, Lot 6, Heavy Industrial District.

- *Application packet dated 4/15/14.*

**6:30 P.M.**      **Estate of Virginia Doulames** for a variance from Section 4145 of the Tewksbury Zoning Bylaws for a perimeter distance requirement as shown on plans filed with this Board. Said property is located at **677 Trull Road**, Assessor's Map 26, Lot 73, zoned Residential.

- *Application packet dated 5/2/14.*
- *Copy of email from Bob Spalding dated 5/20/14.*
- *Copy of email from Doug Spalding dated 5/21/14.*

**CONTINUED HEARING**

**6:30 P.M.**      **GRE Tewksbury Property, LLC and GRE Tewksbury Apartments, LLC, dba Shawsheen Place** for (a) a determination and confirmation pursuant to 760 CMR 56.05(11) that the affordability "lock in period" set forth in the Comprehensive Permit issued by the Board on May 26, 1988 regarding the subject property has expired; and (b) modification of the Comprehensive Permit to address the affordability restriction. Said property is located at **11 Old Boston Road**, Assessor's Map 48, Lot 33, zoned Multi-Family, Commercial and Village Mixed Use Overlay Districts.

- *Letter dated 5/27/14 from Attorney Regnante requesting to be continued to 6/26/14.*